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BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

MODUTECH MARINE, INC.

Appellants,

v.

PUGET SOUND AIR POLLUTION  
CONTROL AGENCY,

Respondent.

PCHB No. 85-85

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

THIS MATTER, the appeal of a notice and order of civil penalty of \$250 for allowing the emission of airborne particulate matter from abrasive blasting operations came on for hearing before the Board at Lacey on August 15, 1985. Seated for and as the Board were Lawrence J. Faulk (presiding). Wick Dufford and Gayle Rothrock, have reviewed the record. Respondent agency elected a formal hearing, pursuant to RCW 43.21B.230 and WAC 371-08-155. Donna Woods, court reporter of Robert H. Lewis & Associates, officially reported the proceedings.

1 Appellant Jeff Gaskell, Plant Superintendent, appeared and  
2 represented Modutech. Respondent agency was represented by its legal  
3 counsel, Keith D. McGoffin.

4 Witnesses were sworn and testified. Exhibits were admitted and  
5 examined. Argument was heard. From the testimony, evidence, and  
6 contentions of the parties, the Board makes these

7 FINDINGS OF FACT

8 I

9 Respondent, pursuant to RCW 43.21B.260, has filed with the Board a  
10 certified copy of its Regulations I and II and all amendments thereto  
11 dated July 26, 1985. We take official notice of those regulations.

12 II

13 On March 5, 1985, in the morning while on routine patrol, an  
14 inspector from PSAPCA investigated a plume of airborne dust emissions  
15 emanating from the rear of Modutech Marine, Inc., 2218 Marine View  
16 Drive in Tacoma, Pierce County, Washington. Modutech Marine, Inc. is  
17 located within the tide flats of Tacoma where concentrations of  
18 airborne particulates fail to meet the national ambient air quality  
19 standards designed to protect human health and welfare (non attainment  
20 area).

21 III

22 The inspector observed that emissions were caused by open outdoor  
23 abrasive blasting to the hull of a U.S. Coast Guard boat. The dust  
24 emissions became airborne approximately fifty to seventy-five feet and  
25 were carried downwind and dispersed.

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IV

The inspector, after approximately eight to ten minutes of observation, took one photograph of the emissions from Taylor Way, then proceeded to a location just above Marine View Drive on Norpoint Way to further observe the emissions and abrasive blasting in progress. The inspector observed two workers involved in the abrasive blasting of the lower hull of the boat, in an open yard area with no tarp or other visible means of dust control in use and the dust being carried downwind one hundred to two hundred feet before being dispersed and then became not visible. The inspector took four photographs of the emissions from the Norpoint Way location. Total observation time was twenty to twenty-five minutes.

V

On March 5, 1985, the inspector mailed field notice of violation (No. 20521) for an infraction of the agency's Regulation I, Section 9.15 for causing or allowing airborne particulate from abrasive blasting operations in sufficient quantities and of such characteristics and duration as, or is likely to be, injurious to human health or which unreasonably interferes with enjoyment of life and property.

On April 24, 1985, respondent agency issued a formal Notice and Order of Civil Penalty No. 6261 of \$250 for the same asserted violation. From this action, Modutech appealed to the Board on May 20, 1985.

1 VI

2 Appellant Modutech has no previous record of violation of PSAPCA  
3 Regulation I.

4 VII

5 Mr. Gaskell testified that this was the first time they had ever  
6 sandblasted a ship. When the inspector asked them to stop  
7 sandblasting, they did so immediately. The company has gone through  
8 bankruptcy and is now on the road to recovery. Mr. Gaskell asserted  
9 if they ever do sandblasting again, they will follow the rules. They  
10 rely heavily on government contract work and believe that this  
11 violation will affect their ability to compete for federal and state  
12 government contracts.

13 VIII

14 Any Conclusion of Law hereinafter determined to be a Finding of  
15 Fact is hereby adopted as such.

16 From these Facts, the Board comes to these

17 CONCLUSIONS OF LAW

18 I

19 The Board has jurisdiction over these persons and these matters.  
20 Chapters 43.21B and 70.94 RCW.

21 II

22 RCW 70.94.011 states, in pertinent part:

23  
24 It is declared to be the public policy of the state  
25 to secure and maintain such levels of air quality  
as will protect human health and safety and comply

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1 with the requirements of the federal clean air act,  
2 and, to the greatest degree practicable, prevent  
3 injury to plant and animal life and property,  
4 foster the comfort and convenience of its  
inhabitants, promote the economic and social  
development of the state, and facilitate the  
enjoyment of the natural attractions of the state.

5 III

6 Section 9.15 of Regulation I, entitled "Airborne Particular  
7 Matter" states:

8 It shall be unlawful for any person to cause  
9 or allow:

10 (a) particulate matter to be handled,  
transported or stored, or

11 (b) a building or its appurtenances or a road  
12 to be constructed, altered, repaired or demolished,  
or

13 (c) untreated open areas located within a  
14 private lot or roadway to be maintained in such a  
15 manner that particulate matter is emitted in  
16 sufficient quantities and of such characteristics  
17 and duration as is, or is likely to be, injurious  
to human health, plant or animal life, or property,  
or which unreasonably interferes with enjoyment of  
life and property.

18 IV

19 We conclude that outdoor blasting with particulate emissions did  
20 occur on March 5, 1985, that the event violated Section 9.15 of  
21 Regulation I. Although no injury was shown, the emission of  
22 particulates in any area already in violation of standards designed to  
23 protect health and welfare "is likely to be" injurious as that term is  
24 used in the statute, RCW 70.94.030(2), and in Section 9.15 of PSAPCA's  
25 regulations.

26 Final Findings of Fact,  
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V

The Washington Clean Air Act, chapter 70.94 RCW, is a strict liability statute. Explanations do not operate to excuse violations of regulations adopted under its authority. Air contaminant sources are required to conform to such regulations.

VI

In determining whether and in what amount a fine should be sustained against Modutech, the surrounding facts and circumstances are relevant. Factors bearing on reasonableness must be considered. These include:

- (a) the nature of the violation;
- (b) the prior behavior of the violator; and
- (c) actions taken to solve the problem.

VII

Appellant Modutech in this case did cause a violation. Appellant has no previous history of violating PSAPCA's Regulation I. Mr. Jeff Gaskell testified they stopped blasting immediately when requested by the inspector and if blasting does occur in the future, they will abide by the rules for such activity. Thus, it appears that a behavior change on the part of the appellant has been effected.

VIII

On the record before us, we conclude that assessing a modest penalty against Modutech is justified. Weighing the facts of this case and the testimony and behavior of appellant, we conclude that part of the penalty should be suspended and the order set forth below

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1 is appropriate.

2 IX

3 Any Finding of Fact which is deemed a Conclusion of Law is hereby  
4 adopted as such.

5 From these Conclusions of Law the Board enters this  
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27 Conclusions of Law & Order  
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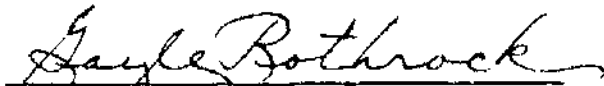
ORDER


The Notice and Order of Civil Penalty is affirmed; However, \$100 is suspended on the condition the company not violate PSAPCA's Regulation I for one year.

DONE this 27th day of September, 1985.

POLLUTION CONTROL HEARINGS BOARD

 9/27/85  
LAWRENCE J. FAULK, Chairman

  
GAYLE ROTHROCK, Vice Chairman

  
WICK DUFFORD, Lawyer Member